

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK IMMIGRATION :
COALITION, et al., :

Plaintiffs, :

v. : Case No.
:

1:18-CF-05025-JMF

UNITED STATES DEPARTMENT :
OF COMMERCE, et al., :

Defendants. :

- - - - -x

Friday, October 12, 2018
Washington, D.C.

Videotaped Deposition of:

JOHN M. ABOWD, Ph.D.,
called for oral examination by counsel for the
Plaintiffs, pursuant to notice, at the law offices of
Arnold & Porter Kaye Scholer, LLP, 601 Massachusetts
Avenue, Northwest, Washington, D.C. 20001-3743,
before Christina S. Hotsko, RPR, CRR, of Veritext
Legal Solutions, a Notary Public in and for the
District of Columbia, beginning at 9:06 a.m., when
were present on behalf of the respective parties:

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1 28 percent, that matters.

2 Q. Do you know whether Dr. Barreto provided
3 the backup to that calculation?

4 A. If he did, it wasn't provided to me.

5 Q. Okay. Thank you.

6 A. So paragraph 60 says that this was a
7 national survey of 6,309 respondents. And
8 paragraph 67 shows the composition of the phone
9 design. And paragraph 75 reports response rate of
10 28 percent.

11 So I think that the survey was
12 administered to 63,000 -- 6,309 sample units, of
13 whom 28 percent responded. If it was administered
14 to 6,309 respondents, then the sample plan in
15 paragraph 67 is not a sample plan.

16 I'm marking paragraph 60 as number 16 and
17 the table in paragraph 67 as number 17.

18 At this point, I'd just like to say I
19 don't know enough about the survey design to
20 continue. It doesn't seem to make sense to
21 speculate. But it's hard -- it's hard to go from
22 that description of the survey to having

1 confidence in the analysis of it.

2 I had other general analysis criticisms.
3 Some of the numbers reported in the report are not
4 accompanied with margins of error. Whether those
5 margins of error are properly calculated or not
6 depends upon exactly how the survey design handled
7 non-response. It had non-response if it had only
8 28 percent respondents. And I accept that a
9 28 percent response rate is within the range of
10 acceptability for this kind of poll.

11 So I'm not saying that you can't learn
12 anything from a poll this size. But I am saying
13 that you have to document the methods that you
14 used to generalize to the populations that he
15 tried to generalize to, and the sample plan
16 documentation is inadequate.

17 Q. Okay. And I should ask you, were you
18 given any of Dr. Barreto's backup to his survey,
19 either in the plan or backup to these tables?

20 A. The only things that I have seen are his
21 reports.

22 Q. Okay.

1 studies that I've put on the record and that in
2 the public record of the Census Bureau show that
3 those operations have succeeded in reducing the
4 net undercount and in reducing differential net
5 undercounts, and that the intercensal research
6 that's done focuses on the deficiencies that are
7 identified in the previous census or the previous
8 several censuses.

9 So it's simply not conjecture. I'm --
10 I'll leave it at that.

11 Q. Thank you. If you could continue.

12 A. I additionally take issue with the final
13 analysis in the -- in paragraph 10 about the
14 self-response rate in the end-to-end test. The
15 end-to-end test was not conducted under full
16 census protocol; in particular, it didn't have a
17 communication campaign. And it was conducted to
18 ensure that the systems were properly integrated
19 and worked properly with each other. It didn't
20 have a target completed response rate that's
21 comparable to the targeted completed response rate
22 in the 2020 census, so it wasn't extended. In

1 order to meet the 2020 targets, it was kept in the
2 field long enough to meet its own targets, which
3 were below the 2020 targets.

4 Q. And just for clarification, when you --
5 we're talking about the communications plan. You
6 said not under a full communications -- you meant
7 not under a full communications plan under not --
8 under a false communications plan? I think
9 that's --

10 A. Did I say false?

11 Q. It sounded like you said false.

12 A. I did not intend to say the word "false."
13 I intended to say that the 2018 end-to-end census
14 test was conducted without a full communication
15 campaign. In fact, it was conducted without the
16 use of the integrated partnership and
17 communication program.

18 Q. Okay. Thank you.

19 A. I disagree with the conclusions in
20 paragraph 11. I'm marking it number 7. I believe
21 that Dr. Barreto was unfamiliar with the
22 appropriate use of subnational net undercount

1 visit form from the end-to-end.

2 Q. I see. If you could continue.

3 A. I disagree with paragraph 31. That's
4 number 17. The end-to-end test was conducted just
5 as the presence of a citizenship question was
6 being announced. And we are examining the data
7 entered by the field enumerators regarding
8 people's reactions to the question. I don't have
9 any conclusions to report from that, but I think
10 it's not correct to conclude that just because it
11 didn't have a citizenship question on it, it
12 couldn't have been affected by the presence of --
13 the discussion about a presence of a citizenship
14 question on the subsequent -- on the actual
15 2020 census.

16 Q. I'm sorry, I didn't follow that. You
17 said the enumerator responses to the question, but
18 the question --

19 A. So there --

20 Q. - wasn't asked --

21 A. So there's -- in the follow-up -- so the
22 enumerators don't use the same instrument that you

1 get. They use an instrument that's customized for
2 the field enumeration and non-response follow-up.
3 And it has a space for them to insert comments
4 regarding things that they think their supervisor
5 would want to know or things that they think the
6 next interviewer who goes there would want to
7 know. The classic example is the dog, but the --
8 other things like household expressed strong
9 reluctance to answer, household objected to the
10 citizenship -- they would record that.

11 Q. Even -- so you're not suggesting that the
12 enumerators actually went out and in the field
13 surveys --

14 A. No, no, no. There's no design study.
15 I'm not suggesting there was a design study. What
16 I'm suggesting is that the enumerators have
17 recorded the sensitivity that was already present
18 in Providence, and the news reports recorded it
19 too, so, it's right, there wasn't a citizenship
20 question, and you can't do the kinds of controlled
21 studies that we all prefer, or even the kinds
22 of -- different studies that you can sometimes

1 construct. But I don't think it's a correct
2 conclusion that inferences from the Providence
3 study, which did not include the citizenship
4 question, will likely be inapposite.

5 Q. I see.

6 A. It probably says inapposite.

7 I'm now in section C. Can I just put my
8 objection to the whole of section C?

9 Q. That's -- that's fine. If you want to
10 summarize what's your --

11 A. Yes. So I'm putting number 18 there.

12 Section C acknowledges that the
13 citizenship question used on the census was not
14 further tested before it was put on the census.
15 It documents that that is consistent with the
16 Census Bureau's stated quality standards because
17 of an explicit exception that predates this census
18 question arising -- i.e., that was already in
19 there -- allowing the use of a question that has
20 been previously tested on another survey without
21 further testing.

22 That exception doesn't require a waiver.

1 A. It is not.

2 Q. Putting aside your central criticism,
3 which I take is the misinterpret -- and if you
4 don't like my language, you can use your own
5 language -- but the misinterpretation of a decline
6 in self-response as signifying anything with
7 regard to an undercount, are the other criticisms
8 you have of Dr. Barreto's report discussed in your
9 report?

10 A. So let's make this easier. I didn't
11 specifically discuss anything about Dr. Barreto's
12 report when I wrote -- especially the version
13 that's in front of me, September 21st, I hadn't
14 even read it. I had read it when I wrote the
15 revised one, but I didn't feel that I needed to
16 comment specifically on his report, that I just
17 needed to document where the estimates that I used
18 in my report came from.

19 And I am relying on the analysis I did.
20 And I am not relying on the analysis that
21 Dr. Barreto did.

22 You asked me what I disagreed with, so I

1 Q. Your 1970 and your 1990 examples.

2 Were the Census Bureau's statistical
3 quality standards that govern the Census Bureau
4 today in effect in either 1970 or in 1990?

5 A. No.

6 Q. With regard to your 1970 example, which
7 is discussed on page 24 of your report, what is
8 your source of information for this analysis? And
9 it's fine -- if you want to consult Exhibit 2,
10 that's fine. We just should make clear on the
11 record that you're doing it.

12 A. I'm consulting Exhibit 2.

13 Oh, okay. It's in the footnote in both
14 places. It's that 1990 census content reinterview
15 survey study cited in footnote 39. Oh, sorry, no.

16 Q. Right. For the 1970 --

17 A. I think the problem here is you had a
18 summary paragraph, and I actually discuss the 1970
19 example. I know that I marked the sources, and
20 they're public, unlike the '92 experiment.

21 I can't figure out what happened to the
22 citation for that. I apologize for having to --

1 Q. It's quite all right. We're just --

2 A. -- dig through my own report.

3 Okay. The report did make the
4 references, and I apologize for the fact that I
5 didn't cite it properly in text.

6 In the report, I cite a paper by Jacob
7 Siegel and Jeffrey Passel in 1979, Coverage of the
8 Hispanic population of the United States in the
9 1970 census: A methodological analysis, current
10 population reports: Special studies P-23, and a
11 URL where you can find it is below.

12 There's a description in there of how
13 that particular question was imported from the
14 current population survey into the 1970 census.

15 Q. Okay. Was that the only source you
16 consulted regarding this example?

17 A. Yes.

18 Q. Do you know whether that study -- I see
19 that it's -- there's a website here for a 1979 --

20 A. So I can help you more. The P series are
21 public reports from the current population survey.
22 And the Library of Congress will have a copy, too.

1 It's just that, where I was sitting, the only copy
2 I could get is the one that happened to have been
3 curated on that particular site.

4 Q. I see.

5 A. But that's an official publication of the
6 Census Bureau.

7 Q. What do the other series of studies
8 issued by the Census Bureau -- what do the
9 prefixes mean, like the G or the J?

10 A. I'll do the best I can.

11 Q. Okay.

12 A. The document curation for most of our
13 information products is not covered by the quality
14 standards. And most of our practices date from
15 when a paper copy was produced and a copy was
16 automatically deposited with the Library of Congress
17 and other curation libraries that held all
18 government printing documents -- all official
19 publications of the U.S. government.

20 So the P series for the current
21 population survey is demographic reports,
22 population reports. In the -- in the production

1 of documents related to decennial censuses, the
2 memo series are generally labeled A, B, C, D, E,
3 sequentially in a form that the associate director
4 for the decennial census dictates at the start of
5 the recordkeeping operation, and then the memos
6 are numbered A-1 and B-1. I don't know all the
7 series. I don't know even what letter we've
8 gotten up to for 2020 or what letters we got up to
9 for 2010.

10 When they're released to the public, our
11 current practice is also to release a paper copy,
12 if one exists. But since official government
13 documents had to be in electronic format, we now
14 have a curated electronic copy, and we depose with
15 the Minnesota Population Center and the
16 Inter-University Consortium on Political and
17 Social Research, which are two academic
18 consortia -- we depose copies there, too.

19 Q. The series label wouldn't necessarily be
20 consistent from census to census?

21 A. As far as I know, it's not.

22 Q. Okay. Do you know whether a copy of the

1 Siegel paper was produced in discovery in this
2 matter?

3 A. I believe it was. Yes.

4 Q. Without having considered the Siegel
5 paper, could you have made the statements in your
6 report about the 1970 example?

7 A. I believe that one of the population
8 experts at the Census Bureau recalled that this
9 might have happened, but couldn't provide any
10 documentation. And it took some searching to find
11 a copy of a report that documented it. So I
12 probably would have known that it was a
13 possibility but had a difficult time tracking down
14 a source for it.

15 Q. You certainly couldn't have provided the
16 level of detail here without consulting this
17 Siegel --

18 A. That's correct.

19 Q. So for the 1970 Hispanic origin question,
20 do you know what the gap of time was between when
21 the question was tested for the CPS and when it
22 was included on the long form?

1 So in order to produce the tables that I
2 actually used, I asked the DRB not to consider
3 those tables, since they didn't have the
4 information. So they had to redact them because
5 they didn't have the information they would need
6 to begin considering clearing them.

7 I didn't use any of the redacted tables.

8 Q. But you've seen the document in
9 unredacted form, correct?

10 A. Yes, I have.

11 Q. Without considering this document, could
12 you have reached all the conclusions in your
13 report?

14 A. I'm pretty sure the answer to that is no.
15 I didn't search for alternative sources for
16 these -- for these documents -- for the -- numbers
17 drawn from this document I did not search for
18 alternative sources for. So if there are any that
19 are not in the public document -- there might have
20 been a summary memo someplace that didn't have the
21 detailed tables that I could have used instead of
22 the memo with the detailed tables, but this is the

1 memo that I had.

2 Q. Now, this memo describes the 2010
3 imputation process, correct?

4 A. The count imputation process.

5 Q. The count imputation process. It doesn't
6 discuss any kind of post-imputation survey or
7 analysis that is done whether the count
8 imputations were accurate, does it?

9 A. The entire whole census -- whole-person
10 census imputations are out of the universe for
11 coverage evaluation. They're not in the
12 data-defined record universe.

13 Q. So the G series memos that Dr. Mule and
14 his team worked on wouldn't speak to coverage of
15 people in the imputation universe, correct?

16 A. No, that's not correct. Net undercount
17 does depend on whole person census imputation, so
18 you can't leave it out of a full coverage
19 analysis. You can declare the coverage universe
20 to be the data-defined census records, but you're
21 still in the end going to have to make an
22 estimation of how to inflate those up to account

1 Q. One would hope.

2 A. I think that's a safe hypothesis.

3 Q. So the J-12 memo doesn't provide
4 stratification, demographic stratification, does
5 it?

6 A. I -- I don't remember. I was waiting for
7 you to direct my attention to the table where it
8 did. I'm just going to look.

9 Q. Well, I don't know if it's been
10 redacted --

11 A. I'm guessing that it doesn't because we
12 know that on the imputations themselves, that we
13 copied all those characteristics from somebody
14 else. So it doesn't make much sense to talk about
15 whether they're correct or not. Why we think we
16 can include them in the overall statistics is that
17 a general property of -- I guess we'll call it
18 ignorable -- ignorable missing data models is that
19 they produce reliable statistics when you do the
20 imputation.

21 But whether the ignorability assumption
22 holds or not is another one of those fundamentally

1 untestable things, unless you bring in additional
2 independent information. And we've already
3 discussed why the post-enumeration survey doesn't
4 do that.

5 Q. Could the Census Bureau have looked at
6 the demographic characteristics of the source of
7 the imputation to model the demographics of the
8 imputation population?

9 A. So -- yes is the answer to that question.
10 And what you would want is you would want a much
11 more diverse team in terms of their
12 specializations than coverage measurement teams,
13 which are extremely well versed in doing the dual
14 system estimation and the associated statistics
15 and not as well versed in combining alternative
16 sources of data to make an independent or an
17 approximately independent estimate of the
18 demographic characteristics of the people that you
19 left out.

20 I've done some of that in other research,
21 but not with respect to census counts.

22 Q. Are the candidate records that are used

1 Hispanics are imputed at a greater or lower rate
2 than non-Hispanic whites, does it?

3 A. It doesn't seem to, no. And I don't
4 see -- if you're just looking at the count-imputed
5 households, I don't see how it could.

6 Q. Is that reflected in Dr. Mule's memo?

7 A. So the overall coverage assessment was
8 designed to be able to isolate Hispanics as a
9 subpopulation of interest and to produce reliable
10 national statistics related to answering the
11 Hispanic origin question yes on the census.

12 Q. The -- J-12 also doesn't provide
13 geographical breakdowns. It doesn't tell you the
14 number of imputations for particular states or
15 jurisdictions, does it?

16 A. I believe they were in the suppressed
17 cells.

18 Q. In the redacted information?

19 A. Yes. If the title of the -- let me see
20 if the title of the redacted tables is there.

21 I can't tell from the redacted titles --
22 from the titles of the redacted tables exactly

1 what geographic detail might have been in them.
2 It doesn't look like there was any. And I don't
3 remember. I didn't look at them, I just had -- I
4 had access to them.

5 Q. Is the rest of the J series of memos the
6 Census Bureau's analysis of imputation during the
7 2010 census?

8 A. It's not exclusively imputation. It's
9 internal technical memos related to the
10 statistical operations in the census.

11 Q. If you look at page 13 of the memo, the
12 references section --

13 A. Got it.

14 Q. -- that cites three other J series memos?
15 Do you see that?

16 A. Yes.

17 Q. None of -- none of those memos have been
18 publicly released, correct?

19 A. As far as I know, that's correct. Yes.

20 Q. And to your knowledge, none of them has
21 been produced in this litigation, correct?

22 A. To the best of my knowledge, that's

1 correct.

2 Q. You have access to all of these memos,
3 correct?

4 A. In principle, yes.

5 Q. You have considered them at some point in
6 your tenure at the Census Bureau, correct?

7 A. So if you're not working in a particular
8 division of the Census Bureau, you don't
9 automatically have access to its internal document
10 file. So I had to learn of the existence of the
11 J series in writing my expert report, and only
12 very recently have I learned -- have I acquired
13 copies of the rest of them.

14 There's not a central document
15 repository. And there's a good reason for that,
16 because the -- your business-related need to know,
17 the confidential information in the redacted
18 tables here, is directly related to whether you're
19 working on the decennial census or not. And we
20 don't automatically grant even the chief scientist
21 access to all of the confidential memos.

22 I -- there's that. And then they're not

1 curated in a central repository. The latter
2 problem we're actually trying to take care of.
3 The former problem of, since I didn't have a
4 business-related need to know until that was
5 established, I wouldn't have been automatically
6 given access to these memos. I had to ask
7 somebody, where's the writeups, and then they
8 properly pointed me to the public ones. And I was
9 able to analyze a lot of the public data, and I'm
10 properly allowed to analyze the microdata from the
11 2010 census, including the coverage measurement
12 data.

13 But until I asked, where are the other
14 studies that you did on imputation, I didn't know
15 about the J series. Maybe somebody who had been
16 in decennial for a lot longer, like Mr. Thompson,
17 would have automatically known. I don't know if
18 he would have known about the 2010 series, but I'm
19 sure he can still tell you every memo series
20 letter from 2000 and from 1990.

21 Q. Did you consider the J series memos on
22 imputation in -- in writing your report?

1 A. The only J series memo that I considered
2 was this one (indicating).

3 Q. Okay. I'm wondering, if you had not
4 considered them, how you can say, at page 13 of
5 your report, that "The Census Bureau is not aware
6 of any credible quantitative data suggesting that
7 imputation in the census leads to a greater net
8 undercount or differential net undercount in
9 comparison to self-response or in-person
10 interviews."

11 A. Because I grilled the author team of
12 these memos and their supervisor with very
13 specific questions in very long sessions to
14 discuss the procedures that were used.

15 And since the metadata database is the
16 memories of those people, I was obligated to rely
17 on their representations, and I'm still relying on
18 it. I believe when they tell me that there
19 wasn't, there wasn't.

20 Q. But you haven't gone back to actually
21 check the J series yourself --

22 A. Now I have the J series because other

1 issues unrelated to the litigation led me to the
2 J series. And Patrick Cantwell, the chief of the
3 DSSD now, has had access to the J series all
4 along. He hasn't been trying to hide the J series
5 from me. He knows there's a limit to what can be
6 read. He produces the documents that he thinks
7 are most relevant. And for litigation purposes,
8 those should be public documents so we all share
9 the same information.

10 So I have tried, to the maximum extent
11 possible, to rely on public documents. Sometimes
12 I just can't.

13 Q. Do any of the other J series memos
14 concern stratification or breakdowns that are of
15 issue in this case, either by demography or
16 geographic basis?

17 A. One of the J series memos is the sampling
18 plan for the post-enumeration survey. So I think
19 the answer to your question is necessarily yes.
20 But I'm just beginning to get familiar with them,
21 so I don't know their contents.

22 Q. Okay. I'm also wondering about the J-9

1 memo that's referenced in the redacted document,
2 which is titled, Census count imputation: Summary
3 of results of the U.S. and the states, whether
4 that might provide a geographic breakdown
5 concerning numbers of imputation -- numbers of
6 count imputation.

7 A. From the title, that's a fair
8 presumption.

9 Q. And that breakdown might tell us, for
10 example, what the New York -- number of
11 imputations in New York is relative to Utah?

12 A. So the public documents for the census
13 tabulate substituted persons. That's a superset
14 of count imputations because it includes the ones
15 that are substituted in partial household
16 imputation.

17 But these confidential ones -- it's -- I
18 don't want to speculate.

19 From the title, I'd draw the same
20 conclusion you drew.

21 Q. Okay.

22 MR. FREEDMAN: I'm going to shift gears,

1 were just speaking about.

2 And in the last full paragraph, the last
3 sentence of that, you state that, "In the 2018
4 end-to-end census, about 9 percent of the NRFU
5 households were resolved when a self-response was
6 received during the NRFU operation."

7 Where does that number come from?

8 A. I am looking for Exhibit 2. And I need
9 to find the same paragraph. And I should have
10 documented it there. I think I know, but let
11 me --

12 Q. Thank you.

13 A. And the page numbers don't agree because
14 there are longer footnotes in this version.

15 I did not document that number. The
16 source should be the 2020 program management
17 review that -- so the next one is next Friday, so
18 it would have been about three months ago,
19 approximately. I was there, so it wasn't in
20 Alaska. So I think it was in August.

21 Q. And --

22 A. I can look. And all of the 2020 --

1 they're quarterly. They're all in a single
2 website. And there's a complete set of slides,
3 and one of them should have that number on it.

4 Q. And so it's a slide presentation that you
5 believe is the source of that 9 percent number?

6 A. Yes.

7 Q. Did you consider any other documents
8 relating to the end-to-end test in writing your
9 report?

10 A. I don't think so. In writing my
11 report -- and I'm sorry I didn't footnote it -- I
12 relied on my memory. I've seen the presentation
13 of the preliminary results from the end-to-end
14 test twice, so -- once when it was reviewed by the
15 executive steering committee and once when it was
16 presented publicly. And I knew them to be public,
17 but I should have gone and found the slide.

18 Q. And other than those slides, you don't
19 recall relying on any other information relating
20 to the 2018 end-to-end test in writing your
21 report?

22 A. That's right.